

Constitutional Law
Course Syllabus-Spring 2026
T, R, F, 9:10 to 10:30

Professor Derek Black
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Office Hours
Tuesdays and Thursdays 12:05 to 1:35

Required Text:

1. ERWIN CHEMERINSKY, CONSTITUTIONAL LAW (7th Edition).

Assignments. We will meet 39 times this semester. We will cover 38 reading assignments, approximately one each day. To the extent we do not complete an assignment on one day, we will continue it the next day and then begin the subsequent assignment. Any significant adjustments to the assignments will be announced in advance in class. Class readings that are 30 pages or longer may carry over into the next day. Conversely, a few reading assignments are particularly short; it is possible that we will may finish them and begin the next assignment. Those short assignments are denoted by an “****” in the reading assignments below so that you can plan accordingly.

Attendance. I will distribute a seating chart on the first day of class. I will take attendance based on the seating chart. Anyone not in their seat when class starts will be counted as absent. I expect you to be present and prepared for every class. Students missing 10% of class meetings must obtain a waiver from the Associate Dean to take the exam. The Associate Dean cannot waive absence for students missing 30% of class meetings. Absences below those thresholds will still count in regard to class participation.

Learning Outcomes and Assessments. I expect students to achieve the following *learning outcomes*:

- Ability to distil core principles and holdings from complex decisions involving multiple opinions, as well as changing doctrines across time
- Knowledge of the powers of each branch of government
- Knowledge of the individual rights of persons
- Ability to apply the rules and doctrines regarding powers and rights to hypothetical situations in writing

- Ability to apply the rules and doctrines regarding powers and rights to hypothetical situations orally

I will assess students' learning through:

- A written final exam involving hypothetical fact patterns, which shall include an essay and multiple choice component
- Oral responses in class questions
- Written responses to practice hypotheticals in class
- Group exercises

Examinations and Grading. One hundred percent of your final grade will be based upon a final examination. I, however, reserve the right to adjust grades up or down by half a letter grade based on exceptionally strong or poor class participation. Class participation will be based on your attendance, your preparation for class, and your good faith responses to oral questions, written practical hypotheticals, and group exercises in class.

ASSIGNMENTS

1. The Constitution, xxxvii to l; Yuval Levin, Can the Constitution Unite Americans, <https://www.youtube.com/watch?v=j2H3Np-pE6Q>.

UNIT I: SEPARATION OF FEDERAL POWERS

The Role of the Judiciary

2. The authority for judicial review, How Should the Constitution Be Interpreted?, Standing 1-12, 23-29

The Division of Power Between the Executive and Legislature

3. Inherent Presidential Power, 229-243****
4. The Administrative State and Major Questions Doctrine, Appointment Power, 243-261, 269-276 (potential in-class writing assignment)
5. Foreign Policy and Immigration, 288-305, 336-45
6. Checks on the President, 345-68, and Trump v. US (handout)

UNIT II: FEDERALISM: THE DIVISION OF POWERS BETWEEN THE STATE AND NATIONAL GOVERNMENTS

Federal Authority and State Limitations on It

7. Introduction: Congress and the States, and Necessary and Proper Clause 99-130
8. Commerce Power, 157-181 (in class writing assignment)
9. 10th Amendment Limits on Congressional Power, 181-207

10. 10th Amendment cont. & Taxing and spending power, 201-07**** (potential in class writing assignment)

**UNIT III: THE STRUCTURE OF THE CONSTITUTION'S PROTECTION OF
CIVIL RIGHTS AND CIVIL LIBERTIES**

11. Case Against the Supreme Court, handout.
12. The application of the Bill of Rights to the states (lecture) and State Action Doctrine, 474-488, 498-503, 508-513

UNIT IV: DUE PROCESS AND THE PROTECTION OF FUNDAMENTAL RIGHTS

Substantive Due Process and Fundamental Rights

13. The Rise and Fall of Lochnerism (lecture) and Introduction to Fundamental Rights, the Right to Marry and to One's Children, Right to Keep Family Together, 800-827
14. Right to Control Upbring of Children, 827-34 and Mahmoud v. Taylor (handout)
15. Reproductive Autonomy & Abortion, 834-887
16. Continued (and Group Discussion)
17. Constitutional Protection for Medical Care Decisions; Privacy: sexual orientation, 888-911
18. Right to Bear Arms, 914-46 and US v. Rahimi (handout)
19. The right to vote and Vote Dilution, 952-975
20. Access to the courts, Education as a Fundamental Right, 997-1006, 1010-1017; Right to Travel, 946-52 (potential in-class writing assignment)

Procedural Due Process

21. What Is a Deprivation? What Is Life, Liberty, and Property?, 1016-1040
22. What procedures are due?, 1045-1051**** (potential in class writing assignment)

UNIT V: EQUAL PROTECTION

Rational Basis: Disability, Wealth, Sexual Orientation, and Age

23. Equal protection methodology; Rational basis review, 609-633

Racial and National Origin Classifications

24. From Slavery to Desegregation, 634-657
25. Proving Intentional Discrimination, 657-676
26. Affirmative Action, 700-735

Gender Classifications

27. Gender Classifications Disadvantaging Women, 741-757, 763-772
28. Gender Identity, US v. Skrametti (handout)

Alienage and Nonmarital Children

29. Discrimination, Self-Government, and Congressional Powers; Benefits for Nonmarital children, 772-788****

Congressional Enforcement of Equal Protection (and due process)

30. Congressional power under the reconstruction amendments, 207-229 (potential in class writing assignment)

UNIT VI: FREE SPEECH

31. Free Speech: Content Neutrality & Government Speech, 1064-1082, 1087-1099
32. Free Exercise: Vagueness, Overbreadth, & Prior Restraints, 1100-1121
33. Free Speech: Illegal Activity, True Threats, Fighting Words, Racist Speech, Obscenity, 1173-1175, 1181, 1189-92, 1999-1212, 1219-1229
34. Commercial Speech, 1270-1287
35. Public and Private Forums, 1365-1393

UNIT V: RELIGION

36. Free Exercise Clause: 1490-1515
37. Establishment Clause: 1524-1540
38. Establishment Clause: Prayer, & Coercion, 1552-76